IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 2964 of 2007()

CRA.558/2005 of ADDL. SESSIONS COURTS (ADHOC), MAVELIKKARA
CC.106/2005 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD

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REVN. PETITIONER: APPELLANT/ACCUSED:

C.K. MOHINI, D/O. C.K. KITTAN,
AGED 37 YEARS, PUTHUPURAYIDATHIL VEEDU,
MUKKOTTUTHARA DESOM, KOTTAYAM DISTRICT.

BY ADV. SRI.B.RENJITHKUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. JOHNSON VYDYAN,
S/O. KOCHUTHOMMAN VYDYAN, THYVILA THEKKETHIL VEEDU
KADAPPA MURI, MYNAGAPPALLY VILLAGE.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2964 OF 2007 A

Dated this the 7th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.106/2005 on the file of the J.F.C.M.-I, Haripad challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. A contention which was not

raised before the trial court and which was subsequently raised before the lower appellate court is that the Haripad court had no jurisdiction to entertain the complaint or try the case. Admittedly, the revision petitioner did not raise the said objection regarding jurisdiction at the earliest point of time. He cannot now turn round and question the jurisdiction of the trial court (vide ***Abdul Gaffar Vs. Bibi Hafiza*** [AIR 1968 Patna 307] and ***Itty Mathew Vs. Ramani*** [1998 (1) KLT 851]). His further contention that the complainant has not proved the transaction in question forming the subject matter of Exts.P1 cheque is also without any merit. At the stage of 313(1)(b) Cr.P.C. examination, he not only admitted his liability under the cheque but was also setting up a plea of discharge. He cannot now turn round and say that the transaction in question has not been proved by the complainant. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on

the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.3,60,000/- (Rupees three lakhs and sixty thousand only) within five months from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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